will then make his own estimate of the value as at the date of filing the petition. If the Collector values the estate, as at that date, at $5,000 or under, then the estate was a small estate, and the Court had no jurisdiction. The petitioner would be advised to apply to the Collector for distribution.

Conversely, where an application is filed in a Land Office, the Collector determines the value of the whole of the estate, not merely of the land, as at the date of filing and if he finds it to exceed $5,000 he rejects the application and refers the applicant to the Court.

The valuation by the Collector is, for the purpose of jurisdiction, conclusive, section 183.

It is true that if, in such a case as that last mentioned, the petitioner waited for a long time before filing his petition and meantime the value of the property fell, the Registrar might rule that the estate had become "small" and send the applicant back to the Collector but this would very rarely occur. The valuation is made for a special purpose and need not closely follow the fluctuations of markets. The valuation must stand for a reasonable time and provided that the applicant acts within that time there will be no difficulty. If an applicant delays the matter unreasonably he must take the consequences.

There is, however, one situation where the applicant may have a choice of forum. If, as in the present case, a valid petition is pending and when it comes on for hearing the jurisdiction has been raised or the value has fallen so that the estate is then within the limits of a "small estate" it is open to the petitioner to apply to withdraw his petition in order to apply to the Collector for distribution. It is true that the fees already paid would be lost but the Collector's fees are low and there might well be both a substantial saving of money and much greater convenience for the parties. In such a case I think the Court would usually grant leave.

I offered to do so in the present instance but the petitioner preferred to go on with his petition.

There is another point on valuation which has sometimes caused difficulty. The Collector of Estate Duty values the estate as at the date of the death. The Collector of Land Revenue values it as at the date of the petition or application. There may be a long interval during which value may alter greatly. This does not matter. For the purpose of determining the jurisdiction, the Estate Duty valuation is wholly irrelevant. Of course, if the later valuation shewed a big difference it should be checked, lest a serious error had occurred in one or the other.

It follows from what I have said that the first line of section 178 is in conflict with section 179 and with the other provisions of the Chapter. Section 178 means and ought to say: — "All applications for distribution of small estates . . . . ."

A further difficulty to which my attention has been called arises from section 177A which explicitly abolishes the jurisdiction of the Court, except on appeal or case stated. It would seem that the Proviso to section 180 is repealed by necessary implication. This is of considerable practical importance because it means that the Collector of the district where the greater part of the property is situated is the only one who can possibly deal with the case, no matter how inconvenient it may be, and it may be extremely difficult for a Collector to determine where e.g. an insurance policy is situated. The raising of the limit to $5,000 greatly increases the number of cases in which such problems will arise.

Many difficulties spring from the very anomalous and artificial part of the definition which enables a Collector to deal with an insurance policy or bank account for $4,000 but only if the deceased also had half an acre of land, possibly in some other district. The obvious and urgently necessary course is to establish one jurisdiction and one simple procedure for all intestate estates up to $5,000.

Order accordingly.

HASHIM BIN MAT ISA v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C. J., Taylor and Briggs, JJ.) March 24, 1950]

[F.M. — Criminal Appeal No. 10 of 1950]

Penal Code, ss. 300 and 302 — Murder — Necessity of proving intention or knowledge — Non-direction by trial Judge — Form of charge — Criminal Procedure Code, ss. 152 and 153 and Second Schedule.

The appellant in this case was tried and convicted on the following charge: "That you on the 6th day of October 1949 at Batu Kurau, in the State of Perak, did commit murder by intentionally causing the death of one Ariffin bin Din and that you thereby committed an offence punishable under s. 302 of the Penal Code." In his summing-up the learned trial Judge did not direct the assessors regarding the necessity of proving intention or knowledge as required by s. 300 of the Penal Code.

Held, (1) that the failure of the trial Judge to give a direction regarding the ingredients of the offence of murder amounted to a non-direction and that the conviction must therefore be quashed; (2) that it is wrong to include the word "intentionally" in a charge of murder and that the proper form of charge is that set out in the second Schedule to the Criminal Procedure Code.

CRIMINAL APPEAL.

P. J. D. Regester for the appellant.

N. L. Cohen for the respondent.

Cur. Adv. Vult.

The Judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — The appellant was charged with murder, and at the conclusion of the trial the two assessors differed in their opinions. The learned trial Judge agreed with the assessor in whose opinion the appellant was guilty, and accordingly the appellant was convicted and sentenced to death.

The prosecution proved that the appellant stabbed the deceased in the neck with a knife and that the deceased died from the wound so inflicted.

At the trial the appellant and his witnesses gave evidence to support a defence of insanity. It is clear from the address of defence counsel that he relied on that defence; but it is also clear that, in addition, he contended that though the prosecution had proved it was the appellant who killed the deceased, an intention to kill had not been proved.

No medical evidence was called at the trial on the question of insanity. Before us, Mr. Regester, counsel for the appellant, applied for an adjournment of this appeal, and for an order that the appellant be sent for observation to the Central Mental Hospital at Tanjong Rambutan. He did this to pave the way for medical evidence being given before this Court at a further hearing of the appeal, if the application for an adjournment was granted.

In the view we took, which is that the conviction and sentence must be quashed for a reason which is set out later in these grounds of judgment, it was unnecessary to consider the application made by Mr. Regester.

Murder is defined in section 300 of the Penal Code as follows :—

"Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly. — If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly. — If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly. — If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid."

A bare killing, without proof of intention or knowledge as required by that section, can never be murder. It is not sufficient for the prosecution to prove merely the killing, without proving intention or knowledge as required by that section set out in that definition. Therefore, in summing-up in a murder case, a trial Judge must direct the Assessors regarding the ingredients of the offence of murder, and if he does not do so, the absence of such a direction must be fatal to a conviction.

In this case there was a total and complete failure on the part of the trial Judge to give any such direction, even though counsel for the appellant at the trial, in his closing address, while conceding that the prosecution had proved that the appellant killed the deceased, expressly submitted that they had not proved the intention to kill.

On account of this total non-direction the conviction could not stand. For this reason we quashed the conviction and sentence and ordered a new trial. Pending the re-trial, we remanded the appellant in custody.

There is one further matter to which we wish to refer. The charge in this case reads :—

"That you on or about the 6th day of October, 1949, at Batu Kurau, in the State of Perak, did commit murder by intentionally causing the death of one Ariffin bin Din and that you thereby committed an offence punishable under section 302 of the Penal Code."

We rule that it is wrong to include the word "intentionally" in a charge of murder. The proper form of charge is set out in the Second Schedule to the Federated Malay States Criminal Procedue Code (Cap. 6) and in Schedule B to the Straits Settlements Criminal Procedure Code (Cap. 21). That proper form of charge reads :—

"That you on or about the ..... day of ..... at ..... committed murder by causing the death of ..... and thereby commited an offence punishable under section 302 of the Penal Code."

Such a charge complies with sections 152 and 153 of the Federated Malay States Criminal Procedure Code and with sections 162 and 163 of the Straits Settlements Criminal Procedure Code. The presence of the word "intentionally" suggests that the charge in the present case was copied from the form set out in text-books on the Indian Penal Code. To include the word "intentionally" in a murder charge is unnecessary, and may cause confusion and embarrassment where the prosecution, at some stage of the trial, find they have to rely for instance on the fourth definition of the offence of murder, which entails proof of knowledge, and not intention.

Conviction quashed.